IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14854 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)

Versus

JAGDEVSINH JAYENDRASINH ZALA - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
MR CHIRAG R KOTHARI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner State Road Transport Corporation has challenged the legality of an Order dated 25.04.2005 passed by Assistant Labour Commissioner and Conciliation Officer, Jamnagar. By

the impugned Order, the said authority was pleased to reject an application filed by the petitioner employer seeking approval of an Order dated 16th October 2004 by which the respondent workman was dismissed from service.

2. The Assistant Labour Commissioner was pleased to observe that for the very same subject matter, conciliation proceedings were initiated by the Union on 27th August, 2004. Conciliation Proceedings continued upto 13th December 2004, resulting in a failure. In the meantime, on 16.10.2004, the workman was dismissed from service. It was therefore found that on the date of dismissal, for the very same subject matter, conciliation proceedings were pending before the Conciliation Officer. It was therefore found that the action of the employer was opposed to the provisions to the Sub-Section (1) of Section 33 of the Industrial Disputes Act, since the workman could not have been dismissed without prior permission. Instead of applying for and obtaining permission, the employer dismissed the workman from service and thereafter sought approval of the dismissal order under Section 33(2)(b) of the Industrial Disputes Act.

3. Having heard the learned Advocate appearing for the parties, I find that the Assistant Labour Commissioner committed no illegality. Learned Advocate Shri H.S. Munshaw appearing for the petitioner was not in a position to controvert the factual conclusions of the authority that for the same subject matter, Conciliation Proceedings were pending from 27.08.2004 to 13.12.2004 during which time by an Order dated 16.10.2004, the workman came to be dismissed from service. In view of this factual background, the Assistant Labour Commissioner was correct in concluding that the employer ought to have taken prior permission before dismissing the workman from service as per provisions of Section 33(1) of the Industrial Disputes Act. Instead, the employer applied for approval of the Order as per provisions of Section 33(2)(b) of the Industrial Disputes Act. The Assistant Labour Commissioner was therefore justified in rejecting the approval application of the employer.

4.In the result, petition fails and is hereby rejected. Rule discharged. No orders as to costs.

(Akil Kureshi, J.)

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